

(ii) Submitted the election after the close of that calendar year; or

(iii) Had previously been notified of its failure to continue to comply.

(8) The finding that the reason for the revocation of a supplier's right to accept assignment has not been removed or there is insufficient assurance that the reason will not recur.

(9) The finding that a hospital accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association is not in compliance with a condition of participation, and a finding that that hospital is no longer deemed to meet the conditions of participation.

(10) With respect to an SNF or NF—(i) The finding that the SNF's or NF's deficiencies pose immediate jeopardy to the health or safety of its residents;

(ii) Except as provided in paragraph (b)(13) of this section, a determination by CMS as to the facility's level of non-compliance; and

(iii) The imposition of State monitoring.

(11) The choice of alternative sanction or remedy to be imposed on a provider or supplier.

(12) The determination that the accreditation requirements of a national accreditation organization do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable long-term care requirements, conditions for coverage, conditions of certification, conditions of participation, or CLIA condition level requirements.

(13) The determination that requirements imposed on a State's laboratories under the laws of that State do not provide (or do not continue to provide) reasonable assurance that laboratories licensed or approved by the State meet applicable CLIA requirements.

(14) The choice of alternative sanction or remedy to be imposed on a provider or supplier.

(15) A decision by the State survey agency as to when to conduct an initial survey of a prospective provider or supplier.

(e) *Exclusion of civil rights issues.* The procedures in this subpart do not apply to the adjudication of issues relating to

a provider's compliance with civil rights requirements that are set forth in part 489 of this chapter. Those issues are handled through the Department's Office of Civil Rights.

[52 FR 22446, June 12, 1987, as amended at 52 FR 27765, July 23, 1987; 53 FR 6551, March 1, 1988; 53 FR 6649, March 2, 1988; 54 FR 5373, Feb. 2, 1989; 56 FR 8854, Mar. 1, 1991; 56 FR 48879, Sept. 26, 1991; 57 FR 8204, Mar. 6, 1992; 57 FR 34021, July 31, 1992; 57 FR 43925, Sept. 23, 1992; 59 FR 56251, Nov. 10, 1994; 60 FR 2330, Jan. 9, 1995; 60 FR 50120, Sept. 28, 1995; 61 FR 32350, June 24, 1996; 62 FR 43937, Aug. 18, 1997; 64 FR 24957, May 10, 1999; 64 FR 39937, July 23, 1999; 64 FR 43295, Aug. 10, 1999; 65 FR 18549, Apr. 7, 2000; 65 FR 62646, Oct. 19, 2000; 71 FR 20781, Apr. 21, 2006; 71 FR 37505, June 30, 2006]

§ 498.4 NFs subject to appeals process in part 498.

A NF is considered a provider for purposes of this part when it has in effect an agreement to participate in Medicaid, including an agreement to participate in both Medicaid and Medicare and it is a—

(a) State-operated NF; or

(b) Non State-operated NF that is subject to compliance action as a result of—

(1) A validation survey by CMS; or

(2) CMS's review of the State's survey findings.

[59 FR 56252, Nov. 10, 1994]

§ 498.5 Appeal rights.

(a) *Appeal rights of prospective providers.* (1) Any prospective provider dissatisfied with an initial determination or revised initial determination that it does not qualify as a provider may request reconsideration in accordance with § 498.22(a).

(2) Any prospective provider dissatisfied with a reconsidered determination under paragraph (a)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(b) *Appeal rights of providers.* Any provider dissatisfied with an initial determination to terminate its provider agreement is entitled to a hearing before an ALJ.

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a hearing decision may request Departmental Appeals Board review, and has